

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1163 of 1999

in

SPECIAL CIVIL APPLICATION No 9455 of 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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VIJAY MARUTI MARATHA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Appellant
MR ASSTT.G.P. FOR THE RESPONDENTS

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/09/1999

ORAL JUDGEMENT

Per Thakker,Act.C.J.:

This appeal is filed against dismissal of Special Civil Application No. 9455 of 1998 by the learned Single Judge on August 10, 1999.

Appellant was the original petitioner. He was detained by the Commissioner of Police, Ahmedabad City in exercise of powers conferred upon him under Sub-Section (1) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 ('Act' for short) on October 2, 1998. The allegation against the detenu was that he was a "bootlegger" within the meaning of Section 2 (b) of the Act. As his activities were found to be prejudicial to maintenance of public order, in exercise of powers conferred under Section 3, therefore, the detaining authority passed an order detaining the detenu with a view to prevent him from carrying on activities in any manner prejudicial to maintenance of public order.

The order was challenged by filing the above petition before the learned Single Judge. Two grounds were raised by the learned counsel for the detenu. It was stated that the report of chemical analyzer in respect of the material seized from the detenu was not furnished to the petitioner-detenu and hence, subjective satisfaction was vitiated. It was also argued that credibility of the witnesses and genuineness of their statements were not duly verified by the detaining authority. Subjective satisfaction was, therefore, vitiated as there could not have been any privilege under Section 9 of the Act. The learned Single Judge dismissed the petition.

At the time of hearing of this appeal, several contentions were raised by the learned counsel for the appellant. It was contended that the learned Single Judge has committed an error of law in rejecting the two grounds which were held against the detenu in the petition. It was also argued that a representation was made to the Honourable Chief Minister on July 20, 1999 which was not disposed of by the Honourable Chief Minister and thus, the order deserves to be quashed and set aside. The said ground was sought to be added by leave of the Court by inserting para 9A of the petition. No affidavit was filed on behalf of the State-Respondent No.1. It was also submitted that even if it is assumed that the allegations levelled against the detenu were correct, at the most, it would be a case of breach of "law and order" situation and not "public order" and hence power could not have been exercised by the detaining authority . It was an error on the part of the detaining authority in not considering in its proper

perspective the fact that the detenu was in judicial custody when the order was passed and in the absence of any cogent material on record to show that he was likely to endanger life of people after getting enlarged on bail and he would continue to carry on illegal activities, no order could have been passed and on that ground alone, the order was vitiated. Finally, it was submitted that looking to the grounds of detention, it is clear that what weighed with the detaining authority was that the detenu ,in the company of his associates, was indulging in ;

- (i) bringing;
- (ii) transporting;
- (iii) storing;
- (iv) possessing, and
- (v) selling

on large scale, foreign liquor/Beer . The sentence in Gujarati reads as under :

In support of the said statement, two cases which have been registered have been mentioned being C.R. 13/ 98 registered at Gandhinagar which was pending in competent court of law and C.R. 5020/98 which was registered at DCB,Ahmedabad city which was under investigation.

Learned counsel submitted that the subjective satisfaction of the detaining authority was based on all the above allegations, viz. that the detenu was bringing, transporting, storing, possessing and selling foreign liquor/ beer and if in the first information report and/or statements, it is not alleged that the detenu was bringing, transporting, storing, possessing and selling foreign liquor/ beer, the subjective satisfaction would be vitiated and as neither in the first information report nor in the statements recorded before the police authorities or placed before the detaining authority, all these averments and allegations have been made, no subjective satisfaction could have been arrived at by the detaining authority and on that ground, the order is vitiated.

The learned AGP on the other hand supported the order passed by the learned Single Judge. He submitted that only two points were raised before the learned Single Judge and since remaining points were not raised,

permission cannot be granted to raise those points for the first time and the subjective satisfaction cannot be challenged on this ground.

We do not enter into larger questions as in our opinion, on the last ground, the appeal deserves to be allowed. It is true that the point was not specifically raised before the learned Single Judge. But at the same time, it cannot be ignored that it is not only the question can be raised on the basis of the order at any stage but the detaining authority based its detention order on the allegations as stated in the grounds. In the grounds themselves, subjective satisfaction has been based on the alleged activities of the detenu and the detaining authority refers that action was necessary in view of the fact that detenu is indulging in activities which were prejudicial to maintenance of public order. Thus it is foundational fact on which subjective satisfaction was based. It is, therefore, incumbent on the part of the detaining authority to satisfy the Court that on the basis of the material available to him, he has arrived at the subjective satisfaction. Correctness or otherwise may not be open to challenge by the detenu by filing a petition in this Court. But obviously, he can contend that there is nothing either in the first information report or in the statements that the detenu was associated and indulging in activities of bringing, transporting, storing, possessing and selling foreign liquor / beer. Our attention was invited by the learned AGP to both the first information report as well as to the statements of Jitendra Vithaldas, Laxman Ratnaji, Manoj alias Mahendra Achlaji and Himatlal Gopalsingh. None of them has stated that the detenu was indulging in bringing, transporting, storing, possessing and selling foreign liquor / beer. Only on this ground, in our opinion, therefore, it can be said that the subjective satisfaction of the detaining authority was vitiated. In view of the fact that only on this ground, detention order deserves to be quashed and set aside, we express no opinion on the other points.

Appeal is accordingly allowed. Order of detention is quashed and set aside . Detenu is ordered to be set at liberty , if not required in any other case. Appeal is disposed of. Direct service permitted.

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parekh

